



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

EPA-R08-OAR-2012-0168; FRL-9692-2

#### Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to UAC Rule 401- Permit: New and Modified Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on April 17, 2008 and partially approve SIP revisions submitted by the State of Utah on September 15, 2006. The revisions contain new rules in Utah's Title 307 Rule 401 (Permit: New and Modified Sources). The intended effect of this action is to propose to approve the rules that are consistent with the Clean Air Act (CAA.) This action is being taken under sections 110 and 112 of the CAA.

**DATES:** Comments must be received on or before [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0168, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- E-mail: [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov)
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA),

Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2012-0168.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments,

go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

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## Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials HAP mean or refer to Hazardous Air Pollutant.
- (iv) The initials MACT mean or refer to Maximum Achievable Control Technology.
- (v) The initials NAAQS mean or refer to National Ambient Air Quality Standards.
- (vi) The initials NSR mean or refer to New Source Review.
- (vii) The initials SIP mean or refer to State Implementation Plan.
- (viii) The words State or Utah mean the State of Utah, unless the context indicates otherwise.
- (ix) The initials UAC mean or refer to the Utah Administrative Code.

## I. General Information

### A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

On September 20, 1999, the State of Utah submitted a renumbering and recodification of its Utah Administrative Code (UAC) rules within the Utah SIP. EPA took final action to approve portions of this submittal on February 13, 2006 (71 FR 7670). In that action EPA approved the recodification of R307-413-7 (Exemption from Notice of Intent Requirements for Used Oil Burned for Energy Recovery, previously found under R307-7-2 and 3). On September 15, 2006, the State of Utah again submitted a renumbering and recodification of its UAC rules within the Utah SIP which renumbered R307-413-7 to R307-401-14 (Used Oil Burned for

Energy Recovery). We are proposing to approve this renumbering in this action.

On April 17, 2008, the State of Utah submitted a revision to R307-401-14 which changed the definition of “Boiler.” We are proposing to approve this definition change in this action.

On October 1, 1990, R307-6 (De minimis Emissions from Air Strippers and Soil Venting Projects) was approved into the Utah SIP. On August 14, 1998, EPA approved revisions to R307-6 (63 FR 43624). On January 8, 1999, Utah submitted substantive revisions to R307-6, which also renumbered R307-6 to R307-413-8 and R307-413-9. EPA did not act on this submittal. On September 15, 2006, Utah submitted revisions which moved R307-413-8 and R307-413-9 to R307-401-15 (Air Strippers and Soil Venting Projects) and R307-401-16 (De minimis Emissions from Soil Aeration Projects). Utah’s January 8, 1999, submittal is superceded by the September 15, 2006, submittal. EPA is proposing to conditionally approve R307-401-15 and approve R307-401-16 as submitted on September 15, 2006, in this action.

All other portions of the September 15, 2006, submittal not addressed in this action will be addressed at a later date.

### **III. What Authorities Apply to EPA’s Proposed Action**

Section 110(l) of the CAA states, “Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.”

The states' obligation to comply with each of the National Ambient Air Quality Standards (NAAQS) is considered as “any applicable requirement(s) concerning attainment.” A demonstration is necessary to show that this revision will not interfere with attainment or

maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide, sulfur dioxide, lead, nitrogen oxides or any other requirement of the Act.

The CAA at section 110(a)(2)(C) requires states to include a minor New Source Review (NSR) program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved. EPA's implementing regulations at 40 CFR 51.160-164 are intended to ensure that new source growth is consistent with maintenance of the NAAQS and 40 CFR 51.160(e) requires states to identify types and sizes of facilities which will be subject to review under their minor NSR program. For sources identified under 40 CFR 51.160(e), section 51.160(a) requires that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104.

EPA recognizes that, under the applicable Federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. The states have significant discretion to tailor minor NSR requirements that are consistent with the requirements of 40 CFR part 51. States may also provide a rationale for why the rules are at least as stringent as the 40 CFR part 51 requirements where the revisions are different from those in 40 CFR part 51. For example, states may exempt from minor new source

review certain categories of changes based on de minimis or administrative necessity grounds in accordance with the criteria set out in [Alabama Power Co. v. Costle, 636 F.2d 323, 360-361 \(D.C. Cir. 1979\)](#). De minimis sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas.

Since there are no ambient air quality standards for air toxics, the area's compliance with any applicable maximum achievable control technology (MACT) standards, as well as any Federal mobile source control requirements under CAA sections 112 or 202(l) would constitute an acceptable demonstration of noninterference for air toxics. A revision to the SIP cannot interfere with any federally mandated program such as a MACT standard (or related section 112 requirements).

#### **IV. EPA's Analysis and Proposed Action on SIP Revisions**

In this proposed rulemaking, we are proposing to approve the renumbering of R307-413-7 to R307-401-14 (Used Oil Burned for Energy Recovery) as submitted by the State of Utah on September 15, 2006, because this provision had been previously approved into the Utah SIP (71 FR 7670) and the revision does not contain substantive changes to the rule. We are also clarifying that R307-401-14(3) refers to the owner or operator of a boiler as described in R307-401-14(1).

We are proposing to approve changes to the definition of "Boiler" in R307-401-14(1) as submitted by the State of Utah on April 17, 2008, in this action. The current federally approved definition of "Boiler" in R307-413-7 references Utah's solid and hazardous waste definition of "Boiler" in R315-1-1 as it was defined in 40 CFR 260.10, as amended on July 1, 2002. Utah's current federally approved version of R315-1-1 incorporates by reference 40 CFR 260.10, as amended on July 1, 2008. Since there is no substantive difference between 40 CFR 260.10, as



amended on July 1, 2002, and 40 CFR 260.10, as amended on July 1, 2008, we are proposing to approve this definition change in R307-401-14.

We are proposing to conditionally approve R307-401-15 and approve R307-401-16 as submitted on September 15, 2006, in this action. We are proposing to conditionally approve R307-401-15 because R307-401-15(3) allows for “test or monitoring method approved by the executive secretary,” which is director’s discretion. Utah submitted a letter to EPA on February 24, 2012, committing to revise R307-401-15(3) to remove the executive secretary’s discretion to approve alternate test or monitoring methods (see docket). Utah must submit a SIP revision to change or remove this language not later than one year after the date of final publication of on this rulemaking. If, however, Utah does not submit such a revision within this timeframe, EPA’s conditional approval of R307-401-15(3) will revert to a disapproval.

R307-401-15 and R307-401-16 allows all air stripper, soil venting and soil aeration projects to be exempt from notice of intent and approval order requirements if the estimated actual air emissions from volatile organic compounds from a given project are less than 5 tons per year (R307-401-9(1)(a)) and the level of any one hazardous air pollutant (HAP) or combination of HAPs are less than the levels listed in R307-410-4(1)(d) (Toxic Screening Levels and Averaging Periods). EPA has approved similar de minimis thresholds for criteria pollutants in past rulemakings: The State of Idaho's permit to construct regulations, which were approved final on January 16, 2003 (68 FR 2217); and the State of Montana’s exclusion for de minimis changes, which were approved final on February 13, 2012 (77 FR 7531). R307-401-15 and R307-401-16 contain provisions which are smaller in nature and scope than the previously approved rulemakings, as they generally only apply to the remediation of underground storage tanks. EPA finds the revisions would not interfere with any applicable requirement concerning

attainment of the NAAQS, rate of progress and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

A review of air stripper, soil venting and soil aeration projects from 2008 - 2010 which were exempted from notice of intent and approval order requirements under R307-401-15 and R307-401-16 show negligible criteria pollutant emissions (see docket). In addition, data from the Utah leaking underground storage tank program shows a significant decrease in the number of new cleanups initiated over the last 10 years (see docket). These provisions meet the requirements of 40 CFR 51.160 because they require prior written approval (R307-401-15(2), R307-401-16(1)) of the State and have testing requirements (R307-401-15(3)) to ensure that exempted projects do not exceed the de minimis thresholds as described in R307-401-9.

## **V. Summary of Proposed Actions**

Based on the above discussion, EPA finds that the revisions are consistent with all CAA requirements. We are proposing to approve the renumbering of R307-413-7 to R307-401-14 (Used Oil Burned for Energy Recovery) as submitted by the State of Utah on September 15, 2006; changes to the definition of “Boiler” in R307-401-14(1), as submitted by the State of Utah on April 17, 2008; and conditionally approve R307-401-15 and approve R307-401-16 as submitted on September 15, 2006.

## **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65

FR 67249, November 6, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 2012

Howard M. Cantor  
Acting Regional Administrator  
Region 8

